

## ***JEFFERSON COUNTY ZONING BOARD OF ADJUSTMENT***

*Don Carroll, Chair; Dale Weis, Vice-Chair; Janet Sayre Hoeft, Secretary; Paul Hynek, First Alternate; Randy Mitchell, Second Alternate*

**PUBLIC HEARING** BEGINS AT **1:00 P.M.** ON THURSDAY, DECEMBER 13, 2012, ROOM 205, JEFFERSON COUNTY COURTHOUSE

**CALL TO ORDER FOR BOARD MEMBERS** IS AT 10:45 A.M. IN COURTHOUSE ROOM 203, PRIOR TO THE HEARING

**SITE INSPECTION FOR BOARD MEMBERS** LEAVES AT 11:00 A.M. FROM COURTHOUSE ROOM 203, PRIOR TO THE HEARING

**1. Call to Order-Room 203 at 10:45 a.m.**

No quorum – meeting was not called to order.

**2. Site Inspections – Beginning at 11:00 a.m. and Leaving from Room 203**

No site inspections were conducted.

**3. Public Hearing – Beginning at 1:00 p.m. in Room 205**

Meeting called to order @ 1:00 p.m. by Hoeft

**4. Roll Call**

Members present: Carroll, Hoeft, Hynek

Members absent: Weis

Staff: Laurie Miller

Notice of Public Hearing read into the record by Hynek.

**5. Certification of Compliance with Open Meetings Law Requirements**

Hoeft acknowledged publication. Staff also presented proof of publication.

**6. Review of Agenda**

Carroll made motion, seconded by Hynek, motion carried 3-0 to approve the review of the agenda.

7. **Approval of November 8, 2012 Meeting Minutes** – Deferred to the end of the hearing.
8. **Communications** - None
9. **Explanation of Process by Board of Adjustment Chair**

***NOTICE OF PUBLIC HEARING  
JEFFERSON COUNTY ZONING BOARD OF ADJUSTMENT***

**NOTICE IS HEREBY GIVEN** that the Jefferson County Zoning Board of Adjustment will conduct a public hearing at 1:00 p.m. on Thursday, December 13, 2012 in Room 205 of the Jefferson County Courthouse, Jefferson, Wisconsin. The matter to be heard is an application for variance from terms of the Jefferson County Zoning Ordinance. No variance may be granted which would have the effect of allowing in any district a use not permitted in that district. No variance may be granted which would have the effect of allowing a use of land or property which would violate state laws or administrative rules. Subject to the above limitations, variances may be granted where strict enforcement of the terms of the ordinance results in an unnecessary hardship and where a variance in the standards will allow the spirit of the ordinance to be observed, substantial justice to be accomplished and the public interest not violated. Based upon the findings of fact, the Board of Adjustment must conclude that: 1) Unnecessary hardship is present in that a literal enforcement of the terms of the ordinance would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome; 2) The hardship is due to unique physical limitations of the property rather than circumstances of the applicant; 3) The variance will not be contrary to the public interest as expressed by the purpose and intent of the zoning ordinance. **PETITIONERS, OR THEIR REPRESENTATIVES, SHALL BE PRESENT.** There may be a site inspection prior to public hearing which any interested parties may attend; a decision shall be rendered after public hearing on the following:

**V1400-12 – Diana McClain:** Variance from Sec. 11.04(f)2, the Residential R-2 zoning controls, and 11.03(f), use restrictions. A variance is being requested to these sections to allow a use in the R-2 zone that is not listed in 11.04(f)2 and is therefore prohibited according to 11.03(f) for the operation of a dog kennel, dog boarding and dog day care. The site is at **N1601 W Ra-Le Drive** in the Town of Koshkonong, on PIN 016-0514-1511-011 (0.475 Acre)

Dian McClain presented her petition. Speaking in favor was Randy McClain, Lu Schwemmer, Louise Jones, Anthony Swantz, Roger Ellingsrud, Mark Pollicks, Sarah Woods, and John Strom. There were no questions or comments in opposition of the petition.

There was a town response in the file approving the petition with conditions which was read into the record by Hynek. Staff report was given by Staff.

Hyek asked the staff to address the personal dogs. Staff explained Hoeft questioned the petitioner if there were any unusual aspects of the property that would figure into her request. Hoeft also questioned the petitioner that if the request was denied, could it still be used for it's permitted purpose. Carroll explained the purpose of the Board of Adjustment and the decision process. Hynek expounded on the responsibility of the Board decisions and the three criteria needing to be met. Hoeft also explained the responsibilities of the Board. Carroll asked Mr. Swan to address the 3 criteria. There was a lengthy discussion, questions and answers between the petitioner, those in favor, staff and Board.

#### **10. Decision on Above Petition (See files & following pages)**

##### **- Approval of November 8, 2012 Meeting Minutes (#7 above)**

Hynek made motion, seconded by Carroll, motion carried 3-0 to approve the November 8, 2012 meeting minutes.

#### **11. Adjourn**

Hynek made motion, seconded by Hoeft, motion carried 3-0 to adjourn @ 2:55 p.m.

**If you have questions regarding these matters, please contact the Zoning Department at 920-674-7113 or 920-674-8638.**

The Board may discuss and/or take action on any item specifically listed on the agenda.

### **JEFFERSON COUNTY ZONING BOARD OF ADJUSTMENT**

Individuals requiring special accommodations for attendance at the meeting should contact the County Administrator at 920-674-7101 at least 24 hours prior to the meeting so appropriate arrangements can be made.

*A digital recording of the meeting will be available in the Zoning Department upon request.*

**DECISION OF THE ZONING BOARD OF ADJUSTMENT  
JEFFERSON COUNTY, WISCONSIN**

**FINDINGS OF FACT**

PETITION NO.: 2012 V1400

HEARING DATE: 12-13-2012

APPLICANT: Diana L. McClain

PROPERTY OWNER: SAME

PARCEL (PIN #): 016-0514-1511-011

TOWNSHIP: Koshkonong

INTENT OF PETITIONER: After-the-fact variance from Section 11.04(f)2, the Residential R-2 zoning controls, and 11.03(f), use restrictions. A variance is being requested to these sections to allow a use in the R-2 zone that is not listed in 11.04(f)2, and is, therefore, prohibited according to 11.03(f) for the operation of a dog kennel, dog boarding and dog day care. The site is a N1601 W Ra-Le Drive in the Town of Koshkonong.

THE APPLICANT REQUESTS A VARIANCE FROM SECTION 11.04(f)2 and 11.03(f) OF THE JEFFERSON COUNTY ZONING ORDINANCE.

THE FEATURES OF THE PROPOSED CONSTRUCTION AND PROPERTY WHICH RELATE TO THE GRANT OR DENIAL OF THE VARIANCE APPLICATION ARE:

The Planning and Zoning Department received a complaint on the property, and sent a letter to the owner. The owner contacted our department and indicated she has had past correspondence with our department. A letter was sent from our office to the owner dated March 8, 2005 in response to her correspondence outlining the business as pet grooming, and the business was going to be conducted in compliance with the accessory home occupation definition of the Jefferson County Zoning Ordinance. The owner is presently conducting a kennel business with the boarding of dogs for long and short periods of time, in addition to grooming. The property is zoned R-2 Residential and kennel operations are prohibited in that zone. The petitioner has stated that there would only be 10 dogs on the property, including her own 5 personal household pets. The R-2 Residential zone only allows two household pets, but does allow additional household pets with a conditional use permit approved by the Planning and Zoning Committee. The petitioner has applied for a conditional use permit for 5 of her personal dogs. The public hearing is on December 20, 2012. The surrounding zoning of the area is R-2 Residential, and the lot is 20,691 sq. ft. There are no unique physical property limitations on the property. The R-2 Residential zoning has listed principal, accessory and conditional uses which give reasonable use of the property as outlined in the Jefferson County Zoning Ordinance.

FACTS OR OBSERVATIONS BASED ON SITE INSPECTIONS: Site inspection not conducted.

FACTS PRESENTED AT PUBLIC HEARING: See tape, minutes & file.

## DECISION STANDARDS

- A. NO VARIANCE MAY BE GRANTED WHICH WOULD HAVE THE EFFECT OF ALLOWING IN ANY DISTRICT A USE NOT PERMITTED IN THAT DISTRICT\_\_\_\_\_
- 
- B. NO VARIANCE MAY BE GRANTED WHICH WOULD HAVE THE EFFECT OF ALLOWING A USE OF LAND OR PROPERTY WHICH WOULD VIOLATE STATE LAWS OR ADMINSTRATIVE RULES: \_\_\_\_\_
- 
- C. SUBJECT TO THE ABOVE LIMITATIONS, VARIANCES MAY BE GRANTED WHERE STRICT ENFORCEMENT OF THE TERMS OF THE ORDINANCE RESULTS IN AN UNNECESSARY HARDSHIP & WHERE A VARIANCE IN THE STANDARDS WILL ALLOW THE SPIRIT OF THE ORDINANCE TO BE OBSERVED, SUBSTANTIAL JUSTICE TO BE ACCOMPLISHED, & THE PUBLIC INTEREST NOT VIOLATED.

**BASED ON THE FINDINGS OF FACT, THE BOARD CONCLUDES THAT:**

1. UNNECESSARY HARDSHIP **IS NOT** PRESENT IN THAT A LITERAL ENFORCEMENT OF THE TERMS OF THE ZONING ORDINANCE **WOULD NOT** UNREASONABLY PREVENT THE OWNER FROM USING THE PROPERTY FOR A PERMITTED PURPOSE OR WOULD RENDER CONFORMITY WITH SUCH RESTRICTIONS UNNECESSARILY BURDENSOME BECAUSE it's principal use is a residence, and it meets that need. It would violate the ordinance of the number of animals and allowed uses.
2. THE HARDSHIP **IS NOT** DUE TO UNIQUE PHYSICAL LIMITATIONS OF THE PROPERTY RATHER THAN THE CIRCUMSTANCES OF THE APPLICANT BECAUSE it's an R-2 Residential zone. Limits are set by the ordinance and laws. The petitioner stated "no" when questioned about if there were any physical limitations to the property.
3. THE VARIANCE **WILL NOT** BE CONTRARY TO THE PUBLIC INTEREST AS EXPRESSED BY THE PURPOSE AND INTENT OF THE ZONING ORDINANCE BECAUSE it will set a precedent by putting a kennel in a residential setting. The public interest is what's in the ordinances, not the township, and not what people in support of so passionately say.

**\*A VARIANCE MAY BE GRANTED IF ALL THESE CONDITIONS ARE MET\***

**DECISION: THE REQUESTED VARIANCE IS DENIED.**

**MOTION:** Hoeft                      **SECOND:** Hynek                      **VOTE:** 3-0

**CONDITIONS OF APPROVAL/DENIAL:**

SIGNED: \_\_\_\_\_ DATE: 12-13-2012  
CHAIRPERSON

**BOARD DECISIONS MAY BE APPEALED TO CIRCUIT COURT. AUDIO RECORD OF THESE PROCEEDINGS IS AVAILABLE UPON REQUEST.**